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NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1982

STATE OF ALABAMA,

Petitioner

V.

CHRIS PRINCE,

Respondent

APPENDIX

TO THE PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT AND
COURT OF CRIMINAL APPEALS OF ALBAMA

OF

CHARLES A. GRADDICK
ATTORNEY GENERAL OF ALABAMA

JOSEPH G. L. MARSTON, III
ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
250 Administrative Building
64 North Union Street
Montgomery, Alabama 36130
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ATTORNEYS FOR PETITIONER

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APPENDIX A

December 28, 1982

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 1982-83

8 DIV. 636

Chris Prince

v.

State

Appeal from Mobile Circuit Court

DeCARLO, JUDGE

Robbery; ten years imprisonment.

Prince was indicted for the kidnapping, rape, and robbery of a young Mobile woman. All three charges arose from a series of events occurring in the early morning hours of April 11, 1981.

The victim was accosted by a young black man as she unlocked her car in the parking lot of her apartment complex around 3:00 o'clock on the morning of April 11, 1981. The man shoved her into the car and then followed her in. He told the victim not to "try anything" because he had a gun. She could not escape through the door on the passenger's side of her automobile because that door was broken and could not be opened from the inside.

The man drove to a side alley next to Murphy High School in Mobile. When he stopped the car, the victim attempted to escape by rolling down her window and opening the right front door from the outside. As she exited, however, her abductor lunged after her and grabbed her with both hands around her throat. She was able to pull him out of the car on that side, where they wrestled in the grass,

and dirt, and on the asphalt, until he eventually overpowered her. He hit her several times and threw her down on the pavement. Her head hit so hard on the pavement that her vision became blurred. In this condition and in the midst of continuing threats, the victim was raped twice by her attacker.

After the attack, the victim escaped. She attempted to take her purse but her attacker grabbed it, removed the seventy dollars from her wallet and threw the purse on the back seat. The victim fled and hid in some bushes nearby until her assailant had driven away in her automobile.

The victim then walked several blocks and flagged down a police car. She gave the officers a description of her assailant, down to his undershorts, and a description of her automobile. The police

officers immediately broadcast these descriptions on their police radio.

Within minutes another police officer on routine patrol spotted the victim's automobile. When he pulled in behind it, the driver, a young black man fitting the victim's description of her attacker, speeded up in an effort to elude the police officer. After a short high speed chase, the victim's automobile "spun out" at a turn and hit a tree. The officer giving chase was no more than twenty feet away when the driver exited the wrecked vehicle and fled on foot. The officer pursued this man, first in his police car and eventually on foot. He lost sight of the suspect for a few moments but then spotted him inside a well lighted room of a residence. The suspect had crawled in the home through an open window.

This suspect, later identified as the appellant, Chris Prince, was apprehended and transported back to the scene of the victim's wrecked automobile. The victim was seated in the front seat of a police car, the headlights of which were pointed directly at the vehicle in which the appellant was sitting, and she identified the appellant as her abductor. She was unequivocal even though her vision was admittedly blurred and the lighting conditions were not excellent. (It was "daybreak" when she made this positive identification.)

The appellant was first tried for rape in case number CC-81-1578. During that trial the victim related the details of the horrible attack upon her and positively identified the appellant in court as the perpetrator of the attack.

The police officer who apprehended the appellant likewise positively identified the appellant in court as the man he saw exiting the victim's automobile, the same man that he pursued and eventually arrested.

The State's evidence showed that the appellant was wearing a black shirt, blue jeans, and red undershorts ("jogging shorts") which exactly matched the description the victim had given the police after her attack but before appellant's arrest. The evidence revealed that the appellant's black shirt had grass stains on one shoulder and that his socks were soiled with mud. The red jogging shorts were soiled with semen and with blood which matched the victim's type. (The victim had experienced some vaginal bleeding during the rape incidents.) The bloodstains on

the appellant's jogging shorts (and on a pair of red jockey shorts which appellant was wearing underneath the jogging shorts) were in the crotch areas.

Appellant's sole defense was an alibi and he was the only defense witness. He testified that he had spent six to eight hours on the night of April 10 and the morning of April 11 at a bar in Touminville. He spent most of that time dancing. He had nothing to drink but did smoke one "joint." He was walking home between 4:00 A.M. and 5:00 A.M. when he noticed a police car "trying to run him down." He ran to a friend's home and crawled in a window where he was soon apprehended by the police.

Appellant explained that he was scared of the police and always ran when they approached him. He explained that he

was a hardworking laborer and must have acquired the grass stain on his shirt and the soiled socks at work. He explained that he had worn his red undershorts for about a week prior to April 11 and that he had had sexual intercourse with a girlfriend earlier that week. He did not know where the blood on his undershorts came from. He did not know his blood type. He did not know whether or not the girl he had had intercourse with was at that time "in her period."

Appellant, in summation, essentially conceded that the victim had been kidnapped, raped and robbed. His sole contention was that he was not the perpetrator of these crimes. He contended that the victim's blurred vision, and the bad lighting conditions led to her misidentification.

Although the evidence seems overwhelmingly against the appellant, the jury returned a general verdict of not guilty. Since the appellant conceded that the victim had been raped, the only issue left for the jury, an issue which the jury decided in appellant's favor, was the validity of appellant's identification. In other words, the jury found that the appellant was not the man who raped the victim.

After being acquitted in the rape case, appellant was tried on the robbery charge stemming from this same series of events. The robbery trial disclosed to the jury evidence nearly identical to that disclosed during the rape trial. This second jury found appellant guilty.

I

At the beginning of the robbery trial the appellant submitted to the trial court a "Motion to Dismiss (PLEA OF AUTREFOIS ACQUIT)" on the grounds that the only controverted issue would be appellant's identification and that this issue had already been decided in his favor in the first trial. The trial court denied the motion. It is this denial that appellant cites as the sole error in this appeal.

The foundation of appellant's argument, here, is "collateral estoppel." A child of civil law, this principle was adopted by federal criminal law at least as early as United States v. Oppenheimer, 242 U.S. 85 (1916). In Ashe v. Swenson, 397 U.S. 436 (1970), the United States Supreme Court held that "collateral estoppel" is embodied in the Fifth Amendment guarantee against double jeopardy and is applicable

to the states through the Fourteenth Amendment. In substance, the court defined "collateral estoppel" as the bar preventing relitigation of a specific issue of ultimate fact when that issue has already been determined between the same parties by a valid and final judgment.

The defendant in Ashe was accused of being one of three or four men who robbed several poker players during a friendly game. He was tried and acquitted for the robbery of one of the poker players. The sole contested issue was identification and the jury found that the defendant was not sufficiently identified as one of the robbers. That specific issue of ultimate fact, i.e. the identification of the defendant, was, therefore, conclusively and finally litigated in the defendant's favor. The court ruled that his timely plea of

former jeopardy founded on "collateral estoppel," and asserted at a subsequent trial for the robbery of another of the poker players, should have been a bar to the second trial.

The court recognized the difficulty of determining whether or not a particular "issue of ultimate fact" has conclusively been litigated, and, therefore, set forth the requirement that reviewing courts examine the records of the prior proceedings. The court found in Ashe that the only rationally conceivable issue in dispute at defendant's first trial was his identity as one of the robbers, and that this issue was conclusively determined by the jury's not guilty verdict. See also Simpson v. Florida, 403 U.S. 384 (1971) and Turner v. Arkansas, 407 U.S. 366 (1972).

The appellant in this case conceded at both trials that the victim had been kidnapped, raped, and robbed. Therefore, "identity" was the only controverted issue. Not only does it defy comprehension, but it is beyond our wildest imagination how any jury could have found this man not guilty in light of the overwhelming evidence presented against him. Nevertheless, the verdict of acquittal in the rape case was conclusive and the identity issue.

We recognize that we are bound by the decision of the United States Supreme Court; however, serious reservations permeate our view of the Ashe decision. Be that as it may, we have absolutely no alternative under Ashe, not only to reverse this case, we are also compelled to render it.

REVERSED AND RENDERED.

All the Judges concur.

FEBRUARY 1, 1983

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

1 Div. 371

Chris Prince

v.

State

Appeal from Mobile Circuit Court
Number CC-81-1576

IT IS ORDERED THAT the application for rehearing be and the same is hereby overruled. It is further ordered that the motion for finding of additional facts under Rule 39(k), Alabama Rules of Appellate Procedure, be and the same is denied.

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
P. O. BOX 351
MONTGOMERY, 36101

May 20, 1983

JOHN O. HARRIS
Presiding Judge
JOHN C. TYSON, III
JOHN P. DeCARLO
JOHN G. BOOKOUT
WILLIAM M. BOWEN, JR.
Judges

MOLLIE JORDAN
Clerk

Honorable James F. Hampton
Attorney at Law - Special Assistant
Attorney General
567 South Hull Street
Montgomery, Alabama 36140

Dear Mr. Hampton:

RE: Chris Prince v. State of Alabama,
1 Div. 371, Mobile, Circuit
Court Number CC-81-1576

The Court of Criminal Appeals has today granted a stay of sixty (60) days from April 22, 1983, to allow filing of a petition for writ of certiorari in the United States Supreme Court. This stay will remain in effect until action is taken on the petition, and if petition is granted, until a decision is rendered by the United States Supreme Court.

The certificate of final judgment has been recalled from the lower court pending determination by the United States Supreme Court, but the certificate will be reissued upon the expiration of the sixty-day stay unless this Court is furnished with proof of the filing of said petition in the United States Supreme Court.

Yours very truly,

/s/ Mollie Jordan

Clerk

cc: Clerk, Mobile Circuit Court
Office of the Attorney General
File
Hon. G. Wayne Ashbee, Attorney for Appellant

APPENDIX B

April 29, 1963

THE STATE OF ALABAMA ---- JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1982-83

Ex parte: State of Alabama

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

(In re: Chris Prince

82-452 v.

State of Alabama)

SHORES, JUSTICE.

The writ of certiorari is denied on federal constitutional grounds. We, like the Court of Criminal Appeals, are unable to distinguish this case from Ashe v. Swenson, 397 U.S. 436 (1970).

WRIT DENIED.

Torbert, C.J., Maddox, Jones, and Beatty, JJ., concur.

APPENDIX C

TITLE 13A
CRIMINAL CODE

* * *

CHAPTER 6.

OFFENSES INVOLVING DANGER TO THE PERSON.

* * *

ARTICLE 2.

ASSAULTS.

§13A-6-20. Assault in the first degree.

(a) A person commits the crime of assault in the first degree if:

(1) With intent to cause serious physical injury to another person, he causes serious physical injury to any person by means of a deadly weapon or a dangerous instrument; or

(2) With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or

organ of his body, he causes such an injury to any person; or

(3) Under circumstances manifesting extreme indifference to the value of human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to any person; or

(4) In the course of and in furtherance of the commission or attempted commission of arson in the first degree, burglary in the first or second degree, escape in the first degree, kidnapping in the first degree, rape in the first degree, robbery in any degree, sodomy in the first degree or any other felony clearly dangerous to human life, or

of immediate flight therefrom, he causes a serious physical injury to another person.

(b) Assault in the first degree is a Class B felony. (Acts 1977, No. 607, p. 812, §2101.)

§13A-6-21. Assault in the second degree.

(a) A person commits the crime of assault in the second degree if:

(1) With intent to cause serious physical injury to another person, he causes serious physical injury to any person; or

(2) With intent to cause physical injury to another person, he causes physical injury to any person by means of a deadly weapon or a dangerous instrument; or

(3) He recklessly causes serious physical injury to another person by

means of a deadly weapon or a dangerous instrument; or

(4) For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness or other physical or mental impairment or injury to another person by administering to him, without his consent, a drug, substance or preparation capable of producing the intended harm.

(b) Assault in the second degree is a Class C felony. (Acts 1977, No. 607, p. 812, §2102.)

§13A-6-22. Assault in the third degree.

(a) A person commits the crime of assault in the third degree if:

(1) With intent to cause physical injury to another person, he causes physical injury to any person; or

(2) He recklessly causes physical injury to another person; or

(3) With criminal negligence he causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or

(4) With intent to prevent a peace officer from performing a lawful duty, he causes physical injury to any person.

(b) Assault in the third degree is a Class A misdemeanor. (Acts 1977, No. 607, p. 812, §2103.)

* * *

§13A-6-60. Definitions.

The following definitions apply to in this article:

(1) SEXUAL INTERCOURSE. Such term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

(2) DEVIATE SEXUAL INTERCOURSE. Any act of sexual gratification between persons not married to each other, involving the sex organs of one person and the mouth or anus of another.

(3) SEXUAL CONTACT. Any touching of the sexual or other intimate parts of a person not married to the actor, done for the purpose of gratifying the sexual desire of either party.

* * *

(8) FORCIBLE COMPULSION. Physical force that overcomes earnest resistance or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person. (Acts 1977, No. 607, p. 812, §2301.)

§13A-6-61. Rape in the first degree.

(a) A male commits the crime of rape in the first degree if:

(1) He engages in sexual intercourse with a female by forcible compulsion; or

(2) He engages in sexual intercourse with a female who is incapable of consent by reason of being physically helpless or mentally incapacitated; or

(3) He, being 16 years or older, engages in sexual intercourse with a female who is less than 12 years old.

(b) Rape in the first degree is a Class A felony. (Acts 1977, No. 607, p. 812, §2310.)

* * *

§13A-6-63. Sodomy in the first degree.

(a) A person commits the crime of sodomy in the first degree if:

(1) He engages in deviate sexual intercourse with another person by forcible compulsion; or

(2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being physically helpless or mentally incapacitated; or

(3) He, being 16 years old or older, engages in deviate sexual intercourse with a person who is less than 12 years old.

(b) Sodomy in the first degree is a Class A felony. (Acts 1977, No. 607, p. 812, §2315.)

§13A-6-64. Sodomy in the second degree.

(a) A person commits the crime of sodomy in the second degree if:

(1) He, being 16 years old or older, engages in deviate sexual

intercourse with another person less than 16 and more than 12 years old.

(2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being mentally defective.

(b) Sodomy in the second degree is a Class C felony. (Acts 1977, No. 607, p. 812, §2316; Acts 1979, No. 79-471, p. 862, §1.)

* * *

§13A-6-66. Sexual abuse in the first degree.

(a) A person commits the crime of sexual abuse in the first degree if:

(1) he subjects another person to sexual contact by forcible compulsion; or

(2) He subjects another person to sexual contact who is incapable of consent by reason of being physically

helpless or mentally incapacitated; or

(3) He, being 16 years old or older, subjects another person to sexual contact who is less than 12 years old.

(b) Sexual abuse in the first degree is a Class C felony. (Acts 1977, No. 607, p. 812, §2320.)

* * *

CHAPTER 8.

OFFENSES INVOLVING THEFT.

* * *

§13A-8-41. Robbery in the first degree.

(a) A person commits the crime of robbery in the first degree if he violates section 13A-8-43 and he:

(1) Is armed with a deadly weapon or dangerous instrument; or

(2) Causes serious physical injury to another.

(b) Possession then and there of an article used or fashioned in a manner to lead any person who is present reasonably to believe it to be a deadly weapon or dangerous instrument, or any verbal or other representation by the defendant that he is then and there so armed, is prima facie evidence under subsection (a) of this section that he was so armed.

(c) Robbery in the first degree is a Class A felony. (Acts 1977, No. 607, p. 812, §3305.)

* * *

§13A-8-43. Robbery in the third degree.

(a) A person commits the crime of robbery in the third degree if in the course of committing a theft he:

(1) Uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance; or

(2) Threatens the imminent use of force against the person of the owner or any person present with intent to compel acquiescence to the taking of or escaping with the property.

(b) Robbery in the third degree is a Class C felony. (Acts 1977, No. 607, p. 812, §3307.)

CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, an Assistant Attorney General of Alabama, a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the State of Alabama, Petitioner, do hereby certify that on this _____ day of June, 1983, I did serve the requisite number of copies of the foregoing on the Attorney for Chris Prince, Respondent, by mailing same to him first class postage prepaid and addressed as follows:

Honorable G. Wayne Ashbee
Attorney at Law
Suite 110
Two Office Park
Mobile, Alabama 36609

JOSEPH G. L. MARSTON, III
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